

VZCZCXRO2957

RR RUEHAG RUEHAST RUEHDA RUEHDBU RUEHDF RUEHFL RUEHIK RUEHKW RUEHLA
RUEHLN RUEHLZ RUEHROV RUEHSR RUEHVK RUEHYG
DE RUEHTC #2595/01 3461528
ZNR UUUUU ZZH
R 121528Z DEC 06
FM AMEMBASSY THE HAGUE
TO RUEHC/SECSTATE WASHDC 7664
RUEAHLA/HOMELAND SECURITY CENTER WASHDC
INFO RUEHZL/EUROPEAN POLITICAL COLLECTIVE
RUEAWJA/DEPT OF JUSTICE WASHDC

UNCLAS SECTION 01 OF 03 THE HAGUE 002595

SIPDIS

DEPT FOR EUR/UBI, S/CT, D/HS, INL
JUSTICE FOR OIA - JFRIEDMAN
DHS FOR OIA

SIPDIS

E.O. 12958: N/A

TAGS: [PTER](#) [PINR](#) [PINS](#) [PGOV](#) [NL](#)

SUBJECT: SHARPER TOOLS FOR THE CT TOOLBOX: DUTCH
COUNTERTERRORISM LEGISLATION IN 2006

REF: A) THE HAGUE 2583; B) 05 THE HAGUE 2648

11. SUMMARY: The Dutch Parliament approved three significant pieces of counter terrorism legislation in 2006. The first, permitting the use of intelligence information in criminal proceedings, went into effect November 1. The other two, which will expand the use of special investigative techniques in terror investigations, and ban organizations on the UN and EU terrorist organizations list, were passed November 14 and are expected to enter into force by February 2007. The new laws complement the 2004 Terrorist Crimes Law, and are expected to facilitate the successful investigation and prosecution of terrorist suspects. The provisions of the three recently adopted counter terrorism laws and three pending bills are summarized in this cable. END SUMMARY.

Mechanism for Using Intelligence Information in Court

12. The long anticipated bill to permit the use of intelligence information in criminal proceedings was approved by the First Chamber (upper house) of Parliament in September 2006, and took effect November 1. The law, known as the Protected Witness Act, establishes special procedures permitting an examining judge to assess the reliability of official intelligence reports without exposing the identities of witnesses or releasing confidential intelligence information to the public. It enables intelligence officers to testify as protected witnesses, either anonymously or otherwise, and provides for the protection of certain information for reasons of national security during a regular examination by the examining judge. According to the Justice Ministry, the procedures are in line with European jurisprudence, which considers limitations on the rights of the defense acceptable if state security is at stake.

13. (SBU) Passage of the Protected Witness Act is expected to facilitate the successful prosecution of terrorist suspects. Counter terrorism prosecutor Alexander van Dam, who prosecuted the Hofstad and Piranha cases, welcomed the new law, telling Emboffs that the ability to introduce classified information developed by the AIVD domestic intelligence service without having to release it publicly would make it easier to secure convictions in future terrorism cases. In its ruling in the recently concluded Piranha case, in which Dutch Moroccan terror suspect Samir Azzouz was convicted of planning a terrorist attack (Ref A), the court specifically noted that it had disallowed evidence based on AIVD intelligence reports, because there was no way

under the law prevailing at the time of the trial to assess the reliability of the information without releasing it in court.

More Investigative Tools in Terrorism Cases

14. (SBU) A bill approved by Parliament in mid-November expanding police investigative powers in investigations and prosecutions of terrorist crimes will enter into force in January or February 2007. The bill lowers the threshold for the use of "special investigative methods," such as surveillance, infiltration, undercover purchases and phone taps. Currently permitted only when police have a "reasonable suspicion" of an offense, such investigative methods will be permitted under the new law when there is an "indication" that a terrorist attack is being planned. A senior police counter terrorism investigator told A/Legatt that in practice, the lower standard means that the police will be able to initiate meaningful investigations at a much earlier stage in terrorists' planning, as the "reasonable suspicion" standard has required that police have information about the facts and the circumstances of a terrorist plot before initiating a formal investigation. Prior approval from the prosecutor's office will be required to use the special surveillance measures.

15. (SBU) The bill also authorizes police to stop and search persons, cars and objects in certain high-risk areas, such as airports, industrial sites, train stations and government buildings, without prior approval from the prosecutor's office. In addition, prosecutors will be allowed, with the consent of the examining judge, to request data from banks, companies, and other private-sector organizations to obtain information about terror suspects; such requests for

THE HAGUE 00002595 002 OF 003

personal data are currently prohibited by the Dutch Privacy Protection Act. Finally, the law lowers the threshold for holding a terror suspect in provisional detention. It allows suspects to be held for up to 14 days if there is a "reasonable suspicion" of terrorist involvement. The CT investigator welcomed the new law as giving the police the tools necessary to conduct effective investigations.

Ban on Terrorist Organizations

16. A second bill passed in November bans the operation in the Netherlands of organizations on the UN or EU terror lists; the law will enter into force February 1, 2007. Previously, only the bank accounts of such groups were frozen. Now, individuals involved in continuing the activities of banned organizations will be punishable with an up-to-one-year prison sentence. The law also provides for action -- including the confiscation and liquidation of the group's Dutch assets -- to be taken against foreign organizations conducting activities or pursuing objectives in the Netherlands deemed contrary to public order, including those not appearing on the UN or EU terror lists. A civil judge must make a determination that a foreign group has acted contrary to the public order before such action can be taken. Under current law, civil action can be taken only against Dutch legal persons, including non-governmental organizations legally established in the Netherlands.

17. (SBU) Deputy head of the Foreign Ministry's Terrorism and New Threats Department Andre Van Wiggeren welcomed the fact that the new law makes it possible to take measures, beyond freezing bank accounts, against organizations on the UN or EU terror lists. He said it was unique that the activities of foreign organizations can be legally banned from operating in the country. According to Van Wiggeren, Parliament passed the bill despite continuing concerns about the EU's secret clearinghouse system and legal protection guarantees for such organizations.

Pending Legislation

¶18. (SBU) Three additional packages of legislation proposed by the government in 2005 are still pending Parliamentary action or are under review by advisory bodies. A bill to give the Justice Minister overriding powers would give the Justice Minister broad decision-making power in the event of a terrorist attack, including allowing the Minister to independently cancel air traffic, cell-phone service, and rail transport in the face of an imminent threat. The Interior Minister would remain responsible for crisis control after an attack. The bill remains under review with the Council of State, which must review all legislative proposals before they are submitted to Parliament. A contact in the Justice Ministry's legislative department told us that the bill is still considered to be "very sensitive."

¶19. (U) The preventive CT measures bill would allow the government to issue restraining orders, based on intelligence or police information, to prohibit a terror suspect's physical proximity to specific locations or persons. The Council of State negatively reviewed the bill; nevertheless, the Cabinet voted in April to submit it to Parliament. Parliament has not yet begun formal consideration of the bill.

¶11. (U) A bill to penalize glorification of terrorist offenses would make the glorification, justification or denial of terrorist attacks, genocide or war crimes a criminal act if such comments could disturb public order. The bill would also increase the penalties for defamation and blasphemy. This is the most controversial of the government's proposed CT legislative proposals. Critics have expressed concerns about the broad scope of the bill's provisions; it is under review by specialized legal review bodies.

COMMENT

¶12. (SBU) Enactment of the special investigative methods and protected witness laws constitutes a significant step forward for Dutch counter terrorism law. The new laws complement the 2004 Terrorist Crimes Act, that made

THE HAGUE 00002595 003 OF 003

membership in a terrorist organization and planning a terrorist attack criminal offenses, and give police and prosecutors valuable additional tools to conduct effective investigations and prosecutions before terrorist plots come to fruition.

Arnall